IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11557 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT ELECTRIC CO. LTD.

Versus

C I T GUJARAT - I

Appearance:

MR JP SHAH for Petitioner

MR MANISH R BHATT for Respondents

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 10/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

Rule. Mr. M.R.Bhatt & Co. waives service of notice of rule on behalf of the respondents. Having regard to the facts of the case and in view of joint request made by the learned counsel for the parties, the petition is taken-up for final hearing today.

2. By means of filing this petition under Article 226 of the Constitution, the petitioner has prayed to issue a writ of certiorari or any other appropriate writ, order or direction to quash and set aside order dated May 17, 2000 passed by the Member, Central Board of Direct Taxes, by which the claim made by the petitioner for refund under section 237 of the Income-tax Act, 1961 is rejected. The petitioner has further prayed to issue a writ of mandamus directing the respondent no.1 to give refund of Rs.19,805/- and Rs.32,206/- to the petitioner with interest thereon at the rate of 15% per annum from the date of payment by the petitioner to the date of refund to the petitioner.

3. The petitioner is a Limited Company. It had filed belated returns for Assessment Years 1990-91 & 1991-92 on April 20, 1994. According to the petitioner, the petitioner was entitled to refund of Rs. 19,805/and Rs. 32,206/- respectively for the above-referred to two assessment years and refund was claimed while filing the returns. However, the refund amount was not given to the petitioner. The Principal Officer of the petitioner-Company, therefore, addressed a letter dated October 1, 1999 to the Income-tax Officer and claimed that refund should be granted, as this was a case of genuine hardship. As the claim for refund advanced in the returns was time barred, the application submitted by the Principal Officer of the petitioner-Company was forwarded to Central Board of Direct Taxes for necessary action. By letter dated December 23, 1999, the Office of the Central Board of Direct Taxes asked the petitioner to show cause as to why the claim for refund should not be rejected, as there was unexplained delay in claiming refund. On receipt of the letter, the petitioner gave reply vide letter dated January 24, 2000 stating, inter-alia, that the delay was due to ill health of the Principal Officer who was in charge of the income-tax work of the company and as there was no disregard of legal obligations or contumacious conduct on the part of the petitioner in not filing the returns in time, the prayer for refund should be granted. The Member of the Central Board of Direct Taxes has rejected the claim for refund made by the petitioner vide order dated May 17, 2000, which has given rise to the present petition.

4. Learned counsel for the petitioner submitted that rejection of the refund claim of the petitioner is absolutely bad in law because the petitioner without doubt has fulfilled the conditions laid down in Circular F. No. 225/208/93-ITA.II, dated October 12, 1993 and the claim for refund could not have been rejected on the ground that case of genuine hardship was not made out by the petitioner. The learned counsel pleaded that claim for refund ought to have been entertained and accepted in view of section 119(2)(b) of the Income-tax Act, 1961, which enables the Board to authorise a competent authority to admit an applicatioin or claim for refund made after expiry of period of limitation. What was emphasized by the learned counsel for the petitioner was that in view of repeated advertisements of the department in newspapers stating that the department is not interested in recovering a rupee more than what is due to it by way of income-tax, the claim made by the petitioner ought to have been accepted by the respondents. In support of his submissions, learned counsel placed reliance on the decision rendered in R. SESHAMMAL v. INCOME-TAX OFFICER AND ANOTHER, (1999) 237 ITR 185

5. Mr. Akil H. Kureshi learned counsel for the respondents submitted that delay in claiming refund is not satisfactorily explained by the petitioner and, therefore, the respondents were justified in rejecting the said claim. Learned counsel for the Revenue argued that the Board has taken into consideration relevant facts of the case and as there did not exist genuine hardship, the Board was justified in rejecting the claim for refund. What was asserted was that the Board has exercised discretion in a reasonable manner and, therefore, the same should not be interfered with by the Court in the present petition, which is filed under Article 226 of the Constitution.

6. We have heard the learned counsel for the parties and taken into consideration the documents forming part of the petition. We may state that the respondents have not filed any reply controverting the averments made in the petition. From the record of the case, it is evident that the Principal Officer of the petitioner-Company was bed ridden around June, 1991, as he was suffering from severe tuberculosis and the doctor had advised him to

take complete bed rest for about 3 months. As per the averments made in the application dated October 1, 1999,

the Principal Officer of the petitioner-Company had taken treatment for tuberculosis which lasted for about 7 to 8 months. It is also clear from the averments made in the said application that around April, 1992 again the Principal Officer of the Company had fallen sick and the doctor had diagnosed the disease to be typhoid and he was once again tied down to the bed. As there was no one to lookafter taxation matters of the Company, the returns could not be filed in time in which refund was claimed. Section 119(2)(b) of the Act empowers the Board to authorise any income-tax authority not being Commissioner (Appeals) to admit an application or claim for any exemption, deduction, refund or any other relief under the Act, after the expiry of period specified by or under the Income-tax Act for making such application or claim and deal with the same on merits in accordance with law. It is an admitted position that in exercise of power conferred by the above-referred to provision, the Board has issued Circular dated October 12, 1993 enabling the Income-tax authority to condone delay caused in claiming refund. It is not the case of the respondents that four conditions mentioned in the said Circular are not satisfied by the petitioner, but the application for refund is rejected only on the ground that the case of genuine hardship was not made out by the petitioner. At this stage, it would be advantageous to refer to the decision of Madras High Court which is relied upon on behalf of the petitioner. The Madras High Court in R. SESHAMMAL (supra) has held as under :

> "This is hardly the manner in which the State is expected to deal with the citizens, who in their anxiety to comply with all the requirements of the Act pay monies as advance tax to the State, even though the monies were not actually required to be paid by them and thereafter seek refund of the monies so paid by mistake after the proceedings under the Act are dropped by the authorities concerned. The State is not entitled to plead the hypertechnical plea of limitation in such a situation to avoid return of the amounts. Section 119 of the Act vests ample power in the Board to render justice in such a situation. The Board has acted arbitrarily in rejecting the petitioner's request for refund."

7. Applying the principles laid down by the Madras High Court in the above-referred to decision to the facts of the case, we are of the opinion that the Board was not justified in rejecting the claim for refund on the ground that case of genuine hardship was not made out by the

petitioner and delay in claiming the relief was not satisfactorily explained, more particularly when the returns could not be filed in time due to ill health of the Officer who was lookingafter the taxation matters of the petitioner. In view of the provisions of section 119(2)(b) of the Act, the phrase "genuine hardship" should have been construed liberally and as the petitioner has satisfied all the conditions mentioned in Circular dated October 12, 1993, the claim for refund advanced by the petitioner ought to have been examined on merit. We may state that the learned counsel for the petitioner on instructions of the petitioner has stated at the Bar that the petitioner would not claim interest on the refund amount payable to the petitioner. Having regard to the facts of the case, we are satisfied that delay caused in filing claim for refund was satisfactorily explained by the petitioner and, therefore, the claim for refund should not have been rejected by the Board on technical ground. Under the circumstances, the impugned order is liable to be set aside, but the direction sought against the respondent no.1 to give amount of refund as prayed for in Para-7(B) of the petition cannot be granted because the claim for refund is not examined by the respondent no.1 on merits.

For the foregoing reasons, the petition succeeds. The order dated May 17, 2000 passed by the Member, Central Board of Direct Taxes which is produced at Annexure-I to the petition is hereby set aside and quashed. The respondent no.1 is directed to consider the claim for refund made by the petitioner on merits as early as possible and preferably within one month from the date of receipt of the writ. In case it is found that the petitioner is entitled to refund as claimed in the present petition, the amount of refund shall be paid to the petitioner forthwith without interest. Rule is made absolute accordingly, with no order as to costs.

(J.M.Panchal,J.) (M.S.Shah,J.)
(patel)